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18 **UNITED STATES BANKRUPTCY COURT**
19 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

20 In re:

21 TULARE LOCAL HEALTHCARE
22 DISTRICT dba TULARE REGIONAL
23 MEDICAL CENTER,

24 Debtor.

Case No.: 17-13797-9-B

Chapter 9

DC No.: WW-32

HCCA'S OPPOSITION TO APPLICATION
FOR EX PARTE ORDER AUTHORIZING
FRBP 2004 EXAMINATION AND
PRODUCTION OF DOCUMENTS
(JPMORGAN CHASE BANK, N.A.)

Date: June 26, 2018

Time: 9:30 a.m.

Dept: B, Ctrm. 13

Place: U.S. Courthouse
2500 Tulare Street, 5TH Floor
Fresno, CA

JUDGE: Hon. René Lastreto, II

1 Healthcare Conglomerate Associates, LLC ("HCCA") opposes the *Application for Ex*
2 *Parte Order Authorizing FRBP 2004 Examination and Production of Documents (JPMorgan*
3 *Chase Bank, N.A.)* filed by Tulare Local Healthcare District, dba Tulare Regional Medical
4 Center (the "Debtor"), on May 30, 2018 (the "Application") [Dkt. No. 539] on the grounds that
5 the Debtor is utilizing the broader "fishing expedition" discovery procedures under FRBP 2004
6 to obtain information from HCCA's bank, JP Morgan Chase Bank ("Chase") when there are
7 two pending adversary proceedings in this court between the Debtor and HCCA. In support of
8 this opposition, HCCA represents the following:

9 I. INTRODUCTION

10 1. At the present time, the Debtor and HCCA are parties to two separate adversary
11 proceedings pending in this Court. The first adversary proceeding, Case No. 17-01095, was
12 commenced in this Court on December 28, 2017, when the Debtor removed to this Court a
13 pending state court action in the Los Angeles Superior Court entitled, *Healthcare*
14 *Conglomerate Associates, LLC v. Tulare Local Health Care District, dba Tulare Regional*
15 *Medical Center*, Case No. BC 676133 (the "Removed Action") [Dkt. No. 1]. On January 4,
16 2018, the Debtor served and filed its answer to HCCA's complaint [Dkt. No. 8] and also filed a
17 counterclaim against HCCA asserting eleven (11) different causes of action [Dkt. No. 9]. The
18 Removed Action has been the subject of multiple stipulations extending deadlines and hearing
19 dates, including the hearings on HCCA's motion to remand [Dkt. No. 17] and two motions to
20 dismiss the Debtor's counterclaim [Dkt. No. 21] and to strike portions of the Debtor's answer
21 [Dkt. No. 26]. Further hearings in the Removed Action are set for June 27, 2018, at 1:30 p.m.

22 2. The second adversary proceeding between the parties was commenced by the
23 Debtor on January 23, 2018, Case No. 18-01005, when the Debtor filed its Complaint to Avoid
24 Preferential Transfers, Fraudulent Conveyance and for Declaratory Relief [the "Avoidance
25 Action"] [Dkt. No. 1]. On April 5, 2018, HCCA filed its answer to the complaint in the
26 Avoidance Action [Dkt. No. 16]. On May 8, 2018, the Debtor filed its First Amended
27 Complaint to Avoid Preferential Transfers, Fraudulent Conveyance, Declaratory Relief and
28

1 Cancellation of Written Instrument (the "First Amended Complaint") [Dkt. No. 27]. HCCA's
2 response to the First Amended Complaint is due on June 4, 2018. The next status conference in
3 the Avoidance Action is scheduled for June 27, 2018 at 1:30, based upon a stipulation and
4 order filed with the Court on May 8, 2018 [Dkt. No. 29].

5 3. On May 30, 2017 (and on previous occasions), counsel for HCCA provided the
6 Debtor's attorneys information regarding certain transfers of monies from and among HCCA's
7 bank accounts at Chase, making the Debtor aware of the existence of HCCA's bank accounts at
8 Chase Bank.

9 4. As noted above, the Debtor filed its Application on May 30, 2018, in which it
10 requests an order authorizing the examination of Chase pursuant to FRBP 2004 and the
11 issuance of a Subpoena for 2004 Examination with Production of Documents. The Application
12 does not specify whose bank account information is being sought by the Debtor.

13 II. ARGUMENT

14 5. The *Pending Proceeding Rule* provides that after the commencement of an
15 adversary proceeding or other contested matter, the parties to that proceeding [or proceedings]
16 or matter may no longer utilize the liberal provisions of FRBP 2004, but must seek discovery
17 under the more restrictive standards of FRBP 7026. *In re National Risk Assessment, Inc.*, 547
18 B.R. 63 (Bkrcty. W.D. N.Y. 2016) (citations omitted). While it is true that the scope of
19 examination under FRBP 2004 is broad, it is not a substitute for discovery authorized in either
20 adversary proceedings or contested matters. *In re Farris-Ellison*, 2015 WL 5306600 (Bkrcty.
21 C.D. Cal. 2015), citing, *In re Dinubilo*. 177 B.R. 932 (Bkrcty. E.D. Cal. 1993) ("If a contested
22 matter or adversary proceeding is pending, Rule 2004 should not be used, but rather, the
23 various discovery provisions of the Federal Rules of Civil Procedure should apply). *Dinubilo*,
24 at 941. See also, 9 *Collier on Bankruptcy* ¶ 2004.01[1] at 2004-3 (16th ed. 2015).

25 6. In this case, there are two separate adversary proceedings pending between the
26 Debtor and HCCA. The scope and vagueness of the Application concerns HCCA, since the
27 Application doesn't specify which accounts at Chase are the subject of the Application.

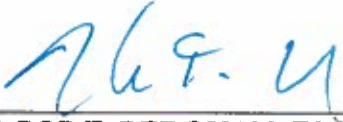
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The discovery procedures and protections provided by FRBP 7026-7037 should be utilized instead of the “fishing expedition” sought by the Application.

WHEREFORE, HCCA prays for an order denying the Application and for such other relief as is just and proper.

Date: May 31, 2018

ORRICK, HERRINGTON & SUTCLIFFE LLP; and
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